

TITLE 327 WATER POLLUTION CONTROL BOARD

Proposed Rule as Preliminarily Adopted LSA Document #99-111

DIGEST

Amends 327 IAC 5-2-11.7 concerning Great Lakes system dischargers interim antidegradation implementation procedures for outstanding state resource waters. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: July 1, 1999, Indiana Register (22 IR 3238).
Second Notice of Comment Period: October 1, 1999, Indiana Register (23 IR 159).
Notice of First Hearing: December 1, 1999, Indiana Register (23 IR 597).
Date of First Hearing: January 12, 2000.
Notice of Second Hearing: March 1, 2000, Indiana Register (23 IR 1449).
Date of Second Hearing: April 12, 2000 continued to May 10, 2000.

327 IAC 5-2-11.7

SECTION 1. 327 IAC 5-2-11.7, AS AMENDED AT 22 IR 3379, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.7 Great Lakes system dischargers interim antidegradation implementation procedures for outstanding state resource waters

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2-24; IC 13-14-8-4; IC 13-15-5-1; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 11.7. (a) ~~For waters~~ **In order to implement the antidegradation standard in 327 IAC 2-1.5-4(c), the commissioner shall ensure that the water quality of a water body designated as an outstanding state resource water (OSRW) under 327 IAC 2-1.5-19(b); except as provided in subsection (b) or (c), the commissioner shall ensure that the water quality of the waters is maintained and protected in their its present high quality without degradation by requiring the following:**

(1) **Except as provided in subsection (b), (c), or (d), for a new or increased discharge of a pollutant or pollutant parameter from an existing Great Lakes discharger directly into an outstanding state resource water OSRW for which a new or increased permit limit would be required, the wasteload allocation (WLA) for the pollutant or pollutant parameter for the shall be based on the new or increased discharge and shall be set equal to the representative background level of the pollutant as determined under section 11.4(a)(8) of this rule. The WLA for the existing discharge and the WLA for the new or increased discharge shall be added together to obtain the WLA that shall be used to establish the WQBELs. in accordance**

~~with section 11.6 of this rule.~~ **For the purpose of this subdivision, “WLA” means the value used to calculate monthly average and daily maximum NPDES permit limitations using the formula in section 11.6(c) of this rule.**

(2) For a new or increased discharge of a pollutant or pollutant parameter **from a new or existing Great Lakes discharger** into a tributary of an ~~outstanding state resource water~~ **OSRW for which a new or increased permit limit would be required:**

(A) section 11.3(a) and 11.3(b) of this rule apply to the new or increased discharge of a pollutant or pollutant parameter into the tributary; and

(B) ~~the new or increased discharge of a pollutant or pollutant parameter into the tributary~~ **it shall not cause a significant lowering of water quality in the** ~~outstanding state resource water.~~ **OSRW.**

When one or more of the items listed in section 11.3(b)(1)(C)(i), 11.3(b)(1)(C)(ii), 11.3(b)(1)(C)(iii)(AA), 11.3(b)(1)(C)(iii)(FF), or 11.3(b)(1)(C)(iii)(II) apply, the requirements of this section are met. When one or more of the subitems in 11.3(b)(1)(C)(iii)(BB), 11.3(b)(1)(C)(iii)(CC), 11.3(b)(1)(C)(iii)(GG), 11.3(b)(1)(C)(iii)(HH), or 11.3(b)(1)(C)(iii)(LL) apply, the applicant demonstrates that the increases are necessary, and the public notice requirements in subsection (c)(6) are met, the requirements of this section are met. When one or more of the subitems in 11.3(b)(1)(C)(iii)(DD), 11.3(b)(1)(C)(iii)(JJ), or 11.3(b)(1)(C)(iii)(KK) apply, the applicant demonstrates that the increases are necessary and that they will result in a net environmental improvement, and the public notice requirements in subsection (c)(6) are met, the requirements of this section are met. As used in this subdivision, “tributary of an ~~outstanding state resource water~~ **OSRW”** includes the upstream segments of a receiving stream when some or all of the downstream segments of the receiving stream are designated as an ~~outstanding state resource water.~~ **OSRW.**

(3) For all discharges into an ~~outstanding state resource water~~ **OSRW**, the commissioner shall establish the following conditions in the permit applicable to the regulated facility:

(A) The permit shall prohibit the regulated facility from undertaking any deliberate action that would result in a degradation of water quality of the ~~outstanding state resource water.~~ **OSRW, unless the action complies with applicable provisions of this section.**

(B) Whether or not the permit contains a limitation for a BCC, the permit shall require monitoring for any BCC known or believed to be present in the permitted discharge, from any point or nonpoint source over which the permittee has control. If there is an increase in loading of a BCC, above normal variability, attributable to a deliberate action, the permit shall require the discharger to notify the commissioner of the increase. ~~Unless~~ **If** the increased discharge of the BCC ~~qualifies~~ **does not qualify** under ~~at least one (1) of the exceptions under~~ subsection (b) or (c) **and is attributable to a deliberate action by the permittee**, the commissioner shall require reduction or elimination of the increase.

(C) Fact sheets prepared pursuant to 40 CFR 124.8 and 40 CFR 124.56 or 327 IAC 5-3-8 shall reflect any conditions developed under clause (A) or (B) and included in a permit.

(b) Subsection (a)(1) ~~and (a)(2) do~~ **does** not apply to the following actions:

(1) ~~Changes~~ **Increases** in loadings of any ~~substance~~ **pollutant or pollutant parameter or heat, from an existing permitted discharger, that are** within the existing capacity and processes, and that are covered by the existing applicable permit. These ~~changes~~ **increases** include, but are not limited to, the following:

(A) Normal operational variability, including, but not limited to, intermittent increased discharges due to wet-weather conditions.

- (B) Changes in intake water pollutants not caused by the discharger.
 - (C) Increasing the production hours of the facility, for example, adding a second shift.
 - (D) Increasing the rate of production.
- (2) New limits for an existing permitted discharger that are not a result of ~~changes~~ **increases** in pollutant loading, and will not allow an increase in pollutant loading, including new limits that are a result of the following:
- (A) New or improved monitoring data.
 - (B) New or improved analytical methods.
 - (C) New or modified water quality criteria or values.
 - (D) New or modified effluent limitations guidelines, pretreatment standards, or control requirements for POTWs.
- (3) Bypasses that are not prohibited at 40 CFR 122.41(m) or section 8(11) of this rule.
- ~~(4) New or increased discharges of a pollutant, when the facility withdraws intake water containing the pollutant from the same body of water, and the new or increased discharge of the pollutant is due solely to the presence of the pollutant in the intake.~~
- ~~(5) New or increased discharges of noncontact cooling water that will not increase the temperature of the receiving water body outside of the designated mixing zone, where applicable, and will not result in degradation of the water quality of the water body.~~
- ~~(6)~~ **(4)** Increasing the sewered area, connection of new sewers and customers, or acceptance of trucked-in wastes (such as septage and holding tank wastes) by a POTW, provided that the increase is within the ~~design flow~~ **existing NPDES permit** limits of the facility, there is no increased loading of BCCs from nondomestic wastes, and no significant change is expected in the characteristics of the wastewater discharged.
- ~~(7) Discharges of storm water subject to a general permit under 327 IAC 15-5 (storm water run-off associated with construction activity) and 327 IAC 15-6 (storm water run-off associated with industrial activity).~~

(c) Notwithstanding subsection (a)(1) ~~and (a)(2)~~, the commissioner may permit the actions in subdivision (1), ~~or (2)~~, **or (3)** after providing public notice and opportunity for comment in accordance with subdivision ~~(5)~~. **(6)**. In all cases, the actions shall assure water quality adequate to protect **designated and** existing uses fully and shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. In addition, the new or increased discharge shall be limited to the minimum necessary to allow the action to occur. The commissioner must approve of the following actions before the **proposed** new or increased discharge can occur:

- (1) The commissioner may allow the following ~~proposed new or increased discharges~~ to occur if the applicant demonstrates that the increases are necessary:
- (A) Short term, temporary (weeks or months) lowering of water quality.
 - (B) New or increased discharges of a pollutant or pollutant parameter due to response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (as defined in IC 13-11-2-24), as amended, corrective actions pursuant to the Resource Conservation and Recovery Act (RCRA), as amended, or similar federal or state authorities, undertaken to alleviate a release into the environment of hazardous substances, pollutants or contaminants that may pose an imminent and substantial danger to public health or welfare.
 - (C) New or increased discharges of a pollutant due to implementation of department-approved industrial or municipal controls on wet-weather flows, including combined sewer overflows and industrial storm water, when there is no net increase in the loading of the pollutant to the ~~same body of water~~. **OSRW.**
 - (D) New or increased discharges of a ~~substance~~ **pollutant or pollutant parameter** used to treat ~~zebra mussels~~ **nuisance species** in an intake water pipe or structure. ~~if the new or increased discharge will not cause adverse effects to human health.~~
 - (E) New or increased discharges of a pollutant or pollutant parameter, when the**

facility withdraws intake water containing the pollutant or pollutant parameter from the same body of water, and the new or increased discharge of the pollutant or pollutant parameter is due solely to the presence of the pollutant or pollutant parameter in the intake. For the purpose of this clause, “same body of water” has the meaning set forth in section 11.5(b)(4)(B) of this rule.

(2) The commissioner may allow the following proposed new or increased discharges to occur if the applicant demonstrates that the increases are necessary and that they will result in a net environmental improvement:

~~(E)~~ (A) New or increased discharges of a pollutant or pollutant parameter that is not a BCC, where there is a contemporaneous enforceable decrease in the actual loading of the pollutant or pollutant parameter from sources contributing to the same body of water **OSRW or to the tributaries to the OSRW** such that there is no net increase in the loading of the pollutant or pollutant parameter to the ~~same body of water. OSRW~~. The commissioner may approve such an action only if:

- (i) the reduction in the discharge of the pollutant or pollutant parameter exceeds the new or increased discharge of the pollutant or pollutant parameter;
- (ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken; **and**
- ~~(iii) the new or increased discharge uses no more than ten percent (10%) of the unused loading capacity for the substance; and~~
- ~~(iv)~~ (iii) the new or increased discharge complies with subdivision (3). (4).

~~(F)~~ (B) An action that will result in a new or increased discharge of a pollutant or pollutant parameter that is not a BCC, if the new or increased discharge is necessary to accomplish a reduction in the discharge of another pollutant or pollutant parameter. **and the commissioner determines the action will result in a net improvement in water quality in the outstanding state resource water.** The commissioner may approve such an action only if:

- (i) the new or increased discharge **of the pollutant or pollutant parameter** is determined to be ~~significantly~~ **either:**
 - (AA) less **toxic and no more** bioaccumulative ~~and~~; or
 - (BB) less **bioaccumulative and no more** toxic;
- (ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken; **and**
- ~~(iii) the new or increased discharge uses no more than ten percent (10%) of the unused loading capacity for the substance; and~~
- ~~(iv)~~ (iii) the new or increased discharge complies with subdivision (3). (4).

~~(G)~~ (C) An action that will result in a new or increased discharge of a pollutant or pollutant parameter that is not a BCC, if the new or increased discharge is necessary to accomplish a reduction in the release of an air pollutant. **and the commissioner determines the action will result in a net environmental improvement.** The commissioner may approve such an action only if:

- (i) the reduction in the discharge of the air pollutant is necessary to meet a state or federal air quality standard or will substantially reduce human exposure to hazardous air pollutants;
- (ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken; **and**
- ~~(iii) the new or increased discharge uses no more than ten percent (10%) of the unused loading capacity for the substance; and~~
- ~~(iv)~~ (iii) the new or increased discharge complies with subdivision (3). (4).

~~(2)~~ (3) **Notwithstanding subdivisions (1) and (2),** an action that will result in the new or increased discharge of a ~~substance~~ **pollutant or pollutant parameter** that is not a BCC into a ~~water body~~ **an OSRW** for a facility with an existing NPDES permit for a discharge into that ~~water body~~ **OSRW** may be permitted in accordance with the following:

(A) The commissioner shall review and make a tentative decision on the application using the following criteria:

(i) The factors contained in IC 13-14-8-4.

(ii) The applicant has demonstrated that all economically and technically feasible measures have been undertaken to avoid the action that will result in the new or increased discharge of the ~~substance~~ **pollutant or pollutant parameter**, including a demonstration that it is not feasible to limit the new or increased discharge to a temporary or short term period.

~~(iii) The new or increased discharge uses no more than ten percent (10%) of the unused loading capacity for the substance.~~

~~(iv)~~ (iii) The new or increased discharge complies with subdivision ~~(3)~~: **(4)**.

(B) The commissioner shall incorporate the tentative decision on the application into the draft new, renewal, or modified NPDES permit, and the draft permit shall be made available for comment under 327 IAC 5-3-9.

(C) After the close of the public comment period (including any public hearing), the commissioner shall present the tentative decision on the application, **and the comments** received during the public comment period (and public hearing), ~~and the commissioner's recommendation~~ to the board.

(D) The board shall take into account the criteria in clause (A) ~~and the factors contained in IC 13-14-8-4~~ in making ~~their~~ a recommendation to adopt, deny, or revise the commissioner's recommendation.

(E) The commissioner shall, after fully considering the board's recommendation, incorporate the ~~commissioner's~~ final decision on the new or increased discharge into the final new, renewal, or modified NPDES permit issued in accordance with 327 IAC 5-3-14.

~~(3)~~ **(4)** A new or increased discharge under subdivision ~~(1)(E), (1)(F), (1)(G), or (2) or (3)~~ may be approved ~~only if~~ **under the following conditions, as applicable:**

(A) Except for heat, the sum of all **previously approved** new or increased discharges for the ~~substance~~ **pollutant or pollutant parameter** allowed under these subdivisions plus the **new** requested increase does not exceed ten percent (10%) of the unused loading capacity for the ~~substance~~ **pollutant or pollutant parameter** as determined as of the date of the first approved increase.

(B) For heat, one of the following conditions is satisfied:

(i) The new or increased discharge will not result in an increase in temperature:

(AA) in a stream, as allowed in 327 IAC 2-1.5-8(c)(4)(C), at the edge of a mixing volume approved in accordance with section 11.4(b)(2) and 11.4(b)(3) of this rule; or

(BB) in Lake Michigan, as allowed in 327 IAC 2-1.5-8(c)(4)(D)(iv), at the edge of a one thousand (1,000) foot arc inscribed from a fixed point adjacent to the discharge.

(ii) The new or increased discharge will not result in an increase in waste heat:

(AA) in a stream, is less than the amount determined by calculating the number of British thermal units (BTUs) required to raise the temperature of the stream design flow of the receiving stream by one (1) degree Fahrenheit; or

(BB) for Lake Michigan, greater than five-tenths (0.5) billion BTUs per hour.

~~(4)~~ **(5)** The following definitions apply throughout this subsection:

(A) "Total loading capacity" means the product of the applicable water quality criterion times the sum of the existing effluent flow and the approved mixing volume for Lake Michigan, or the stream design flow, for the ~~water body~~ **OSRW** in the area where the water quality is proposed to be lowered, expressed as a mass loading rate.

(B) "Unused loading capacity" means that amount of the total loading capacity not utilized by point source and nonpoint source discharges. The unused loading capacity is established at the time the request to lower water quality is considered.

(C) These definitions cannot be used to calculate the total loading capacity and unused loading capacity for total suspended solids, dissolved oxygen, heat, radioactive substances, bacteria, and pH.

~~(5)~~ **(6)** Upon receipt of a request for application of an antidegradation exception under this subsection, the commissioner shall provide notice, request comment, and, ~~if requested,~~ schedule and hold a public meeting on the application. **The notice, request for comments, and public meeting shall be conducted** in accordance with section 11.2 of this rule.

~~(d) As used in this section, "same body of water" has the meaning set forth in section 11.5(b)(4)(B)(i) of this rule.~~ **Notwithstanding subsection (c)(4)(B), and in accordance with the antidegradation standard in 327 IAC 2-1.5-4(e), in those cases where the potential lowering of water quality is associated with a thermal discharge granted pursuant to Section 316 of the Clean Water Act and 327 IAC 5-7, the decision to allow such degradation shall be consistent with Section 316 of the Clean Water Act and 327 IAC 5-7.**

(e) The department shall report to the board annually as to whether the increases allowed by this section have been determined to have a measurable effect on human health, aquatic life, or wildlife. The department shall use all available information to conduct the evaluation and prepare the report for the board.

~~(f) This section shall expire on July 1, 2000.~~ *(Water Pollution Control Board; 327 IAC 5-2-11.7; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1461; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3380; filed Jul 30, 1998, 4:55 p.m.: 21 IR 4522; filed Jun 30, 1999, 2:34 p.m.: 22 IR 3380)*

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on April 12, 2000, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Training Room 8, Indianapolis, Indiana, the Water Pollution Control Board will hold a public hearing on proposed amendments to 327 IAC 5-2-11.7, Great Lakes system dischargers interim antidegradation implementation procedures for outstanding state resource waters.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996 Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Lonnie Brumfield, Office of Water Management, (317) 233-2547 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

*Attn: Brandye Hendrickson, ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, IN 46206-6015*

or call (317) 233-1785 (V) or (317) 233-6565 (TDD). Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Water Management, Room 1255, 100 North Senate Avenue, and Legislative Services Agency, Indiana Government Center-South, 302 West Washington Street, Room E011, Indianapolis, Indiana and are open for public inspection.

Matthew C. Rueff
Assistant Commissioner

